

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
**CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS**

DO NOT WRITE IN THIS SPACE	
Case 02-CB-238361	Date Filed 3-25-19

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT			
a. Name AFSCME, DC37, Local 374		b. Union Representative to contact (b) (6), (b) (7)(C)	
c. Address (Street, city, state, and ZIP code) 125 Barclay Street New York, NY 10007		d. Tel. No. (b) (6), (b) (7)(C)	e. Cell No.
		f. Fax. No.	
		g. e-mail (b) (6), (b) (7)(C)@dc37.net	
h. The above-named labor organization has engaged in and is engaging in unfair labor practices within the meaning of section 8(b), subsections (1) and (list subsections) (A) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Since about (b) (6), (b) (7)(C), 2019, the above-named labor organization, by its officers, agents, and/or representatives, has unlawfully refused to process the grievance of employee (b) (6), (b) (7)(C), regarding essential working pay issues, overtime issues, and elimination of the union (b) (6), (b) (7)(C) position, for reasons that are arbitrary, discriminatory, or otherwise unlawful. Work Location: 476 5th Avenue, New York, NY 10018			
3. Name of Employer New York Public Library		4a. Tel. No.	b. Cell No.
		c. Fax No.	
		d. e-mail	
5. Location of plant involved (street, city, state and ZIP code) 445 5th Avenue, New York, NY 10016		6. Employer representative to contact Terrance Neal, VP Human Resources	
7. Type of establishment (factory, mine, wholesaler, etc.) Public Library	8. Identify principal product or service Public library		9. Number of workers employed 1000+
10. Full name of party filing charge (b) (6), (b) (7)(C)			
11. Address of party filing charge (street, city, state and ZIP code) (b) (6), (b) (7)(C)		11a. Tel. No.	b. Cell No. (b) (6), (b) (7)(C)
		c. Fax No.	
		d. e-mail (b) (6), (b) (7)(C)	
12. DECLARATION (b) (6), (b) (7)(C) read the above charge and that the statements are true to the best of my knowledge and belief. (b) (6), (b) (7)(C), an individual (b) (6), (b) (7)(C) (Print/type name and title or office, if any)		Tel. No.	
		Cell No. same as above	
		Fax No.	
Address same as above		e-mail	
Date 3/25/2019			

RECEIVED
NLRB
REGION 2
2019 MAR 25 PM 3:38
NEW YORK, NY**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

LEGAL DEPARTMENT

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April 25, 2019

Jamie Rucker
Field Attorney
National Labor Relations Board
Region 2
26 Federal Plaza, Suite 3614
Brooklyn, New York 10278-3699

Re: Case No. 02-CB-238361

(b) (6), (b) (7)(C) and AFSCME, DC37, Local 374
(New York Public Library)

Dear Mr. Rucker:

This letter sets forth the Position Statement of District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO and its affiliated Local 1374 ("DC 37" or "Union") regarding the above-docketed charge, filed pursuant to Section 8(b)(1)(A) of the National Labor Relations Act ("Act"). For the reasons set forth below it is the position of the Union that the National Labor Relations Board lacks jurisdiction over the employer New York Public Library ("Library" or "NYPL") and therefore the charge should be dismissed.

DC 37 is an amalgam of local unions representing approximately 125,000 employees in the various agencies, authorities, boards, corporations and cultural institutions of the City of New York. Local 374 represents quasi-public employees in various titles throughout the public library system, including (b) (6), (b) (7)(C) ("Charging Party"). The Charging Party alleges that since on or about (b) (6), (b) (7)(C) 2019, the Union has refused, for reasons that are

arbitrary, discriminatory or otherwise unlawful, to process (b) (6), (f) grievance related to (b) (6), (f) employment with the Library.

As a threshold matter, the Union argues that the Library is not an employer within the meaning of §2(2) of the Act and therefore the Board lacks jurisdiction over the instant matter. Under this section, the term employer shall not include any State or political subdivision thereof.

In *NLRB v. The Natural Gas Utility District of Hawkins County, Tennessee*, the Supreme Court held that an employer is a political subdivision and therefore a public employer if the employer was either: (1) created directly by the State to constitute a department or administrative of the government; or, (2) is administered by individuals who are responsible to public officials or the general public. *See* 402 US 600, at 604-05 (1971). When at least one of the prongs of this test is met, the employer is not subject to the Board's jurisdiction.

The Board previously addressed the question of its jurisdiction over the public library systems of the City of New York in *Queens Borough Public Library*. *See* 195 NLRB No. 174 (1972). The Board held that due to the substantial nexus between the Queens Public Library and the City of New York in terms of funding, governance, and the collective bargaining relationship, "it would not effectuate the policies of the Act to assert jurisdiction over the Library," and accordingly dismissed the petition. *Id.*

Similar to *Queens Borough Public Library* decision, there is a substantial nexus between the NYPL and the City of New York. The Library is granted a charter from the Board of Regents of the University of the State of New York and is incorporated under the New York Education Law, rather than the corporation law. *See* New York Educ. Law § 216. The Board of Trustees of the Library includes the New York City Mayor, New York City Comptroller and Speaker of the City Council as *ex officio* members. The Board is subject to the New York Codes, Rules and Regulations, which applies registration standards to all public libraries in the State. *See* 8 CRR-NY 90.2.

There is also a significant nexus between the City and the Library in terms of funding. In 2018, the Library received more than \$175,000,000 in funding from the City of New York. *See* New York Public Library 2018 Annual Report, at 49, *available at* <https://www.nypl.org/help/about-nypl/annual-report>. The Library receives approximately 75.9% of its branch library revenue from the City, with another 6.1% from the State and Federal government. *Id.* at 48.

For these reasons, the Library is a political subdivision of the City of New York. The first prong of the *Hawkins* test is met because the Library is chartered by the State of New York, and is subject to operational standards set by the State. The second prong of the *Hawkins* test is met because the Library is administered in part by public officials. The vast majority of the Library's funding comes from the City and other governmental entities. Therefore, under the *Hawkins* analysis, and the *Queens Borough* precedent, the Library is a political subdivision of the State and should be exempt from Board jurisdiction.

Based on the foregoing, the Library is not an employer within the meaning of the Act and the charge should be dismissed for lack of jurisdiction. In the alternative, if the Board does assert jurisdiction, the Union respectfully requests an opportunity to provide its position on the material elements of the instant Charge. Please do not hesitate to contact me if you any questions concerning this matter.

Very truly yours,



Michael Coviello
Assistant General Counsel



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 02
26 Federal Plaza, Suite 3614
New York, NY 10278-3699

Agency Website:
www.nlrb.gov
Telephone: (212) 264-0300
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May 30, 2019

(b) (6), (b) (7)(C)

Re: AFSCME, DC37, Local 374
(New York Public Library)
Case 02-CB-238361

Dear (b) (6), (b) (7)(C):

We have carefully investigated and considered your charge that LOCAL 374, District Council 37, AFSCME, AFL-CIO ("Union") has violated the National Labor Relations Act ("Act").

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

The charge you filed against the above-named Union alleges that the Union has refused to process your grievances regarding "essential working pay issues, overtime issues, and elimination of the (b) (6), (b) (7)(C) position" for arbitrary, discriminatory, or otherwise unlawful reasons. You have clarified that the essential working pay issue with which you are concerned is the Employer's refusal to pay you time and a half for work you performed on (b) (6), (b) (7)(C) 2018. The charge in this matter was filed March 25, 2019 and served two days later, on March 27, 2019.

Section 10(b) of the Act states that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made." The charge allegation that the Union unlawfully refused to pursue a grievance regarding the Employer's failure to pay you at the time and a half rate for your work on (b) (6), (b) (7)(C) 2018 is barred by that part of the Act because the Union notified you by e-mail on (b) (6), (b) (7)(C) 2018 that it accepted the Employer's position that the severe weather condition which would have entitled you to time and a half had ended during the evening of (b) (6), (b) (7)(C) 2018. Similarly, the Union advised you by e-mail message on (b) (6), (b) (7)(C) 2018 that it believed the Employer was within its rights to eliminate the (b) (6), (b) (7)(C) position. Thus, Section 10(b) of the Act precludes issuance of a complaint regarding either allegation.

Regarding the remaining allegation, that the Union has unlawfully refused to process a grievance concerning the Employer's assignment of overtime, the evidence establishes that the Union addressed the issue at a labor-management meeting held on about (b) (6), (b) (7)(C) 2019. There is no evidence the decision to address overtime assignments in that forum was based on arbitrary or discriminatory considerations.

I am therefore refusing to issue a complaint in this matter.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlr.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlr.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

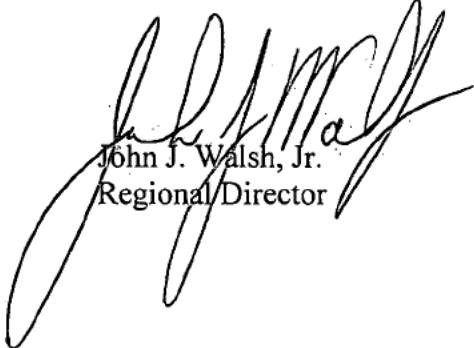
Appeal Due Date: The appeal is due on **June 13, 2019**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than **June 12, 2019**. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before June 13, 2019**. The request may be filed electronically through the **E-File Documents** link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after **June 13, 2019, even if it is**

postmarked or given to the delivery service before the due date. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



John J. Walsh, Jr.
Regional Director

Enclosure

cc: Local 374, District Council 37, AFSCME, AFL-CIO
Attn: (b) (6), (b) (7)(C)
125 Barclay Street, 5th Floor
New York, NY 10007

Michael Coviello, General Counsel
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New York, NY 10007-2233

New York Public Library
Human Resources Department
Attn: Terrance Neal, VP - HR
445 Fifth Avenue
New York, NY 10016